

<b>Communication Re: Appeal</b>	<b>Application No.</b> 10/045,803	<b>Applicant(s)</b> CONNOLLY, PHILIP
	<b>Examiner</b> Keith Hendricks	<b>Art Unit</b> 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on \_\_\_\_\_ is not acceptable because:
- (a) ☐ it was not timely filed.
  - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
  - (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
  - (d) ☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$\_\_\_\_\_.
  - (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
  - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.
2. ☒ The appeal brief filed on April 29, 2004 is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
  - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
  - (c) ☐ the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$\_\_\_\_\_.

**The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).**

☒ (d) The reasons set forth on the attached sheets.

3. ☐ The appeal in this application is DISMISSED because:
- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
  - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
  - (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
  - (d) ☐ other: \_\_\_\_\_
4. ☐ Because of the dismissal of the appeal, this application:
- (a) ☐ is abandoned because there are no allowed claims.
  - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
  - (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,803	01/12/2002	Philip Connolly	7287	3678

7590 07/28/2004

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

ATTACHMENT TO NOTICE OF DEFECTIVE APPEAL BRIEF

The Appeal Brief filed April 29, 2004, is defective, as it does not address all issues present and remaining from the Final Office action of October 07, 2003.

- Claims 1-2, 7 and 10 were rejected under 35 U.S.C. § 102(b) as anticipated by, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Bohren.

Appellant's statement of the issues, and corresponding arguments, indicate that the rejection was made only under 35 U.S.C. § 103(a). This is incorrect. Further, appellant's statement that this rejection applies only to claims 1, 7 and 10 is incorrect.

- Claim 1 was rejected under 35 U.S.C. § 102(b) as anticipated by, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over any of the following: Kronberg, Jameson et al., Nielsen, or Kosikowski et al.

Initially, appellant has addressed a rejection which has never appeared in the application, namely "Kronberg '524 in view of Bohren '465 under 35 U.S.C. § 103(a)" (according to page 6 of the appeal brief). This was not a rejection set forth by the Office, and furthermore, appellant has never addressed the actual rejections set forth in either the first Office action (see page 8 therein), or the final Office action (see page 5 therein). Secondly, appellant's statement of the issues, and corresponding arguments, indicate that the rejection was made only under 35 U.S.C. § 103(a). This is incorrect. Finally, appellant's statement that this rejection applies to claims 1, 7 and 10 is incorrect, as the rejection was applied to claim 1 alone.

- Claims 1-3, 7-8 and 10 were rejected under 35 U.S.C. § 103(a) as obvious over Meister et al.

Initially, appellant has addressed a rejection which never appeared in the application, namely "Meister '609, in view of Kronberg, and further in view of Bohren under 35 U.S.C. § 103(a)" (according to page 6 of the appeal brief). This was not a rejection set forth by the Office, and appellant has not addressed the actual rejection set forth in the final Office action. For reference, see the first Office action, pages 6-7 therein, as it pertains to the statute 35 U.S.C. § 103(a), as well as the final Office action,

pages 5-6 therein. Finally, appellant's statement that this rejection applies to claims 1, 7 and 10 is incorrect, as the rejection was applied to all pending claims 1-3, 7-8 and 10.

\*\* This application is currently not in condition for appeal to the Patent Office Board of Appeals. Appellant has not addressed the outstanding rejections, and must do so before the Examiner may respond in an Examiner's Answer, and before the application is forwarded to the Board for consideration.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



KEITH HENDRICKS  
PRIMARY EXAMINER